

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

05 - 11789-JLT
SOFTTRAX CORPORATION,

Plaintiff,

v.

PATRICK RASICOT,

Defendant.

CASE NO. _____

NOTICE OF REMOVAL RECEIPT # _____

(Diversity)

MAGISTRATE JUDGE Alexan

AMOUNT \$ 250

SUMMONS ISSUED N/A

LOCAL RULE 4.1 1

WAIVER FORM _____

MCF ISSUED _____

BY DPTY. CLK. FDM

DATE 8/30/05

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendant Patrick Rasicot hereby removes this civil action from the Massachusetts Superior Court, Norfolk County, Session B, Case No. 05-01342, to the United States District Court for the District of Massachusetts. This Court has removal jurisdiction because this is a civil action “of which the district courts of the United States have original jurisdiction” and an action in which “none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(a) - (b); *see* 28 U.S.C. § 1332.

Removal of this action is proper for the following reasons:

1. On August 1, 2005, plaintiff Softrax Corporation (“Softrax”) filed this action against defendant Patrick Rasicot (“Rasicot”) in Massachusetts Superior Court, Norfolk County, Case No. 05-01342 (the “State Action”). A true and correct copy of the Summons and Complaint in the State Action is attached hereto as Exhibit 1.¹

¹ All references to exhibits cited herein, including all process, pleadings and orders served upon defendant, are included in the Appendix of Exhibits Cited in Notice of Removal, submitted herewith.

2. In the State Action complaint, Softrax identifies itself as “a corporation organized under the laws of Delaware, with its principal place of business in Canton, Norfolk County, Massachusetts.” Ex. 1, ¶ 2.

3. Rasicot is a resident of the state of Rhode Island. *See* Ex. 1, ¶ 4.

4. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as explained in the following paragraphs 8-10.

5. In the State Action complaint, Softrax alleges that Rasicot has breached a Noncompetition, Nondisclosure and Inventions Agreement (the “Agreement”) dated March 13, 2000. (A copy of the Agreement is attached to Softrax’s complaint. *See* Ex. 1.) In its prayer for relief in the State Action complaint, Softrax seeks a preliminary and permanent injunction,

restraining and enjoining Rasicot from (i) engaging in “Prohibited Business” as defined in Section 2(c) of the Agreement for the “Noncompete Period” defined in the Agreement and (ii) otherwise breaching the agreement.

Ex. 1 at 7.

6. Section 2(c) of the Agreement defines the “Noncompete Period” as “the period commencing on the date of this Agreement and ending two (2) years following the date on which the Employee last performs services for or on behalf of the Company (the ‘Severance Date’).”

7. Softrax alleges in the State Action complaint that Rasicot resigned from Softrax in June, 2005. *See* Ex. 1, ¶ 8.

8. While Softrax omits any claimed damages from its State Action complaint, the value of the object of the litigation – restraining Rasicot from performing

his new job with NetSuite (*see* Ex. 1, ¶ 16) – is clearly ascertainable by reference to the terms of Rasicot's employment arrangement with NetSuite.

9. A true and correct copy of NetSuite's May 30, 2005 offer letter to Rasicot for the position of "Subject Matter Expert – PreSales" is attached hereto as Exhibit 34. NetSuite's offer letter, which was accepted by Rasicot's counter-signature on June 6, 2005, explicitly sets forth Rasicot's compensation:

You will be reporting to Melissa Saunders and will receive an annulized [*sic*] salary of \$110,000 with an estimated on target earnings of \$150,000. . . . You will be granted the option to acquire 15,000 shares of NetSuite common stock, subject to approval by the Board of Directors. Your options will vest, consistent with NetSuite's Stock Plan, 25% one year from grant date and 1/48th monthly thereafter for a total of 4 years vesting.

Upon your start day, you will be eligible to participate in NetSuite's employee benefit plans including medical, dental, vision, life and disability insurance. You will be eligible to participate in NetSuite's 401(k) plan 90 days after your start date with the company matching 34% of your contribution up to \$3,570 per year. . . .

Ex. 2, at 1.

10. Given that Rasicot's compensation, as detailed above, well exceeds \$75,000 in a single year, Softrax's requested two-year injunction has a value that exceeds the jurisdictional amount requirements of 28 U.S.C. § 1332.

11. Accordingly, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

12. After serving the State Action complaint, Softrax sought and received a preliminary injunction. On or about August 12, 2005 the Superior Court (Brady, J.), entered a Memorandum and Order, attached hereto as Exhibit 22, allowing Softrax's

Motion for Preliminary Injunction and ordering defendant to refrain from working for NetSuite. On or about August 19, 2005, that order was upheld by a single justice of the Massachusetts Appeals Court. *See* Ex. 29.

13. This Notice of Removal is timely in that it is brought within thirty (30) days of notice of plaintiff's State Action complaint upon Rasicot.

14. A Notice of Filing of this Notice of Removal will be filed promptly with the Massachusetts Superior Court, Norfolk County, and will be served on plaintiff.

15. Rasicot reserves all defenses available to him at law, in equity, or otherwise. Rasicot does not waive any defenses available to him by the filing of the instant Notice.

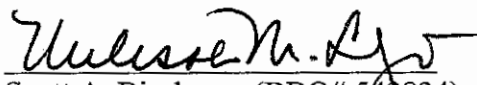
16. Attached to the Appendix of Exhibits Cited In Notice of Removal, filed herewith, are Exhibits 1-34, which are true and correct copies of all additional pleadings and orders from the State Action.

WHEREFORE, defendant Patrick Rasicot notices the removal of this case to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq.*

Respectfully submitted,
PATRICK RASICOT

By his attorneys
BIRNBAUM & GODKIN, LLP

Dated: August 30, 2005


Scott A. Birnbaum (BBO# 543834)
Robert N. Feldman (BBO# 630734)
Melissa M. Longo (BBO# 647649)
Birnbaum & Godkin, LLP
280 Summer Street, 5th Floor
Boston, MA 02210
Tel: 617-307-6100
Fax: 617-307-6101

CERTIFICATE OF SERVICE

I, Melissa M. Longo, counsel for the defendant, do hereby certify that on this 30th day of August 2005, I caused to be served a true copy of the foregoing upon all parties by fax and by mailing same, first class mail, postage pre-paid, to all counsel of record:

T. Christopher Donnelly
Paula M. McManus
COUNSEL FOR PLAINTIFF
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd floor
Boston, MA 02108
Tel: 617-720-2880


Melissa M. Longo

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLERK'S NOTICE

This document can not be scanned due to its size, or the way in which it was bound.

The original is available for viewing in the Clerk's Office.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SOFTRAX CORPORATION

(b) County of Residence of First Listed Plaintiff

NORFOLK

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 617-720-2880
T. Christopher Donnelly, Donnelly, Conroy & Gelhaar,
One Beacon Street, Boston, MA 02108

DEFENDANTS

PATRICK RASICOT

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) Scott A. Birnbaum 617-307-6120
Birnbaum & Godkin, LLP, 280 Summer Street
Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☒ 4 ☐ 4
Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1441; 28 U.S.C. §1332

Brief description of cause: action for enforcement of non-competition agreement.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

Preliminary Injunction

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8-30-05

SIGNATURE OF ATTORNEY OF RECORD

Melissa M. Lgo

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only)

SOFTTRAX CORPORATION v. RASICOT

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME: SCOTT A. BIRNBAUM

Birnbaum & Godkin, LLP

ADDRESS 280 Summer Street, Boston, MA 02210

TELEPHONE NO. 617-307-6120